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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
DUSTIN LEWIS,  
  
Defendant.

2:17-CR-244-APG-NJK

**Unopposed Motion for Interlocutory Sale**

**ORDER**

The United States of America (United States) respectfully moves this Court for an Order for an Interlocutory private judicial sale of the following real property for the reasons set forth herein:

Real property known as 1035 Aviator Court, Henderson, Nevada 89002, more particularly described as:

That portion of the North half (N 1/2) of the Northwest quarter (NW 1/4) of section 32, township 22 South, range 63 East, M.D.M. and M., described as follows:

Parcel Two (2) of that certain parcel map on file in File 109 of Parcel Maps, Page 34, in the Office of the County Recorder, Clark County, Nevada, together with all improvements and appurtenances thereon, APN: 179-32-101-053

(all of which constitutes property).

**I. PROCEDURAL HISTORY**

1. On August 2, 2017, the grand jury returned a Two-Count Criminal Indictment charging Dustin Lewis (Lewis) in Count One with conspiracy to commit bank fraud in violation of 18 U.S.C. §§ 1344 and 1349 and in Count Two with bank fraud in violation of 18 U.S.C. § 1344. Indictment, ECF No. 1.

2. Lewis is currently scheduled to go to trial on February 10, 2020, with calendar call scheduled for February 4, 2020 (ECF No. 79).

## II. ARGUMENT

### A. Statutory Authority

When certain conditions are present, the court has authority under the following statutory provisions to order an interlocutory sale of property that is subject to criminal forfeiture prior to a final adjudication on the Government's forfeiture action.

#### 1. The Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions

The Supplemental Rules generally apply to civil in rem forfeitures. See 28 U.S.C. § 2461(b); *United States v. \$506,231 in United States Currency*, 125 F.3d 442, 449 n.5 (7th Cir. 1997) ("The Supplemental Rules are applicable to civil forfeiture proceedings pursuant to 28 U.S.C. § 2461(b)").

Supplemental Rule E(9)(b) provides:

- (i) On application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold – with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court – if:
  - (A) the attached or arrested property is perishable, or liable to deterioration, decay or injury by being detained in custody pending the action;
  - (B) the expense of keeping the property is excessive or disproportionate; or
  - (C) there is an unreasonable delay in securing release of the property.

See *United States v. One Parcel of Real Property described as Lot 41, Berryhill Farm Estates*, 128 F.3d 1386, 1389-90 (10th Cir. 1997) (motion for interlocutory sale filed under Supp. R. E(9)(b)); *United States v. Esposito*, 970 F.2d 1156, 1160 (2d Cir. 1992) (Supp. R. E(9)(b) authorized interlocutory sale).

Supplemental Rule G(7) provides:

- (a) Preserving and Preventing Criminal Use of Property. When the Government does not have the actual possession of the defendant property the court, on motion or on its own, may enter any order necessary to preserve the property, to prevent its removal or encumbrance, or to prevent its use in a criminal offense.

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1 (b) Interlocutory Sale or Delivery

- 2 (i) Order to Sell. On motion by a party or a person having custody of the  
3 property, the court may order all or part of the property sold if:  
4 (A) the property is perishable or at risk of deterioration, decay, or injury  
5 by being detained in custody pending the action;  
6 (B) the expense of keeping the property is excessive or is disproportionate  
7 to its fair market value;  
8 (C) the property is subject to a mortgage or to taxes on which the owner is  
9 in default; or  
10 (D) the court finds other good cause.  
11 (ii) Who Makes the Sale. A sale must be made by a United States agency  
12 that has authority to sell the property, by the agency's contractor, or by  
13 any person the court designates.  
14 (iii) Sale Procedures. The sale is governed by 28 U.S.C. §§ 2001, 2002, and  
15 2004, unless all parties, with the court's approval, agree to the sale,  
16 aspects of the sale, or different procedures.  
17 (iv) Sale Proceeds. Sale proceeds are a substitute res subject to forfeiture in  
18 place of the property that was sold. The proceeds must be held in an  
19 interest-bearing account maintained by the United States pending the  
20 conclusion of the forfeiture action.  
21 (v) Delivery on a Claimant's Motion. The court may order that the property  
22 be delivered to the claimant pending the conclusion of the action if the  
23 claimant shows circumstances that would permit sale under Rule  
24 G(7)(b)(i) and gives security under these rules.  
25 (c) Disposing of Forfeited Property. Upon entry of a forfeiture judgment, the  
26 property or proceeds from selling the property must be disposed of as  
27 provided by law.

15 2. Customs Laws

16 Further authority is found in the customs statute, 19 U.S.C. § 1612(a), which  
17 provides that:

18 Whenever it appears to the Customs Service that any vessel, vehicle, aircraft,  
19 merchandise, or baggage seized under the customs laws is liable to perish or to waste  
20 or to be greatly reduced in value by keeping, or that the expense of keeping the same  
21 is disproportionate to the value thereof, and such vessel, vehicle, aircraft,  
22 merchandise, or baggage is subject to section 1607 of this title, and such vessel,  
23 vehicle, aircraft, merchandise, or baggage has not been delivered under bond, the  
24 Customs Service shall proceed forthwith to advertise and sell the same at auction  
25 under regulations to be prescribed by the Secretary of the Treasury. If such vessel,  
26 vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title,  
27 the Customs Service shall forthwith transmit its report of the seizure to the United  
28 States attorney, who shall petition the court to order an immediate sale of such  
vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it  
the court shall order such immediate sale, the proceeds thereof to be deposited with  
the court to await the final determination of the condemnation proceedings. Whether  
such sale be made by the Customs Service or by order of the court, the proceeds  
thereof shall be held subject to claims of parties in interest to the same extent as the  
vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to  
such claim.

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1           3.       Criminal Asset Forfeiture Provisions

2           In addition to the explicit provisions above, Fed. R. Crim. P. 32.2(b)(7) also  
3 provides general authority for interlocutory sales. Rule 32.2(b)(7) states, “At any time  
4 before entry of a final forfeiture order, the court, in accordance with [Fed. R. Civ. P. Supp.  
5 R. G(7)], may order the interlocutory sale of property alleged to be forfeitable.” (brackets  
6 added). Interlocutory sales are intended to preserve the value of property that is subject to  
7 forfeiture.

8           B. Lewis Agreed to the Interlocutory Sale

9           Lewis agreed on October 23, 2019, through his counsel, Kendelee Works, to the  
10 interlocutory sale of the property. The United States requests the Court allow Lewis and  
11 the government to sell the property to a third party through Doug Sawyer at an arm’s  
12 length transaction.

13          C. The Conditions for an Interlocutory Sale Are Present

14          The Government believes a court-ordered interlocutory private judicial sale of the  
15 subject property, pursuant to the provisions cited above, is justified because Lewis agreed  
16 on October 23, 2019, through his counsel to sell the property and from the net sale  
17 proceeds (1) pay \$220,000 to OneWest Bank, the victim of his mortgage fraud, (2) the  
18 remaining balance will be deposited with the court registry to be applied toward restitution  
19 of \$704,002 to SCPA in case number 2:17-CR-391-APG-VCF, and if any net sale  
20 proceeds are left after paying 1 and 2 above, the remainder will be paid to the Department  
21 of Justice Seized Asset Forfeiture Fund. Lewis wants this done to demonstrate his desire to  
22 make the victims whole in restitution.

23       III. Judicial Sales Procedure

24          If a court orders an interlocutory sale of property over the objection of any interested  
25 party, the sale must comply with the provisions of 28 U.S.C. § 2001 and 2002. These  
26 statutes provide procedural safeguards to ensure that court-ordered sales are made on terms  
27 that best preserve the parties’ interests. Section 2001(a) authorizes public sales of property  
28 and sales by court-appointed receivers. Section 2001(b) permits private sales of property for

1 cash or other consideration after a hearing of which notice to all interested parties shall be  
2 given by publication, or as otherwise directed by the court, and after the court finds that the  
3 best interests of the estate will be conserved thereby.

4 By this motion, the United States is requesting authorization to proceed with a  
5 private sale of the above-listed property. Based upon the reasons set forth herein, the  
6 United States believes that a prompt sale of the property by Lewis and the United States,  
7 followed promptly by releasing the proceeds to the United States affords the best protection  
8 to all concerned. The United States believes a private sale versus a public sale will allow  
9 Lewis and the United States the discretion to sell the properties in the most commercially  
10 feasible manner.

11 As required by section 2001(b) notice of the Government's motion for an  
12 interlocutory private judicial sale and the hearing on the motion must be given by  
13 publication or otherwise as the court directs. The government believes, and requests, that  
14 placing the real property in a multiple listing site through a real estate agent will meet this  
15 requirement.

16 Pursuant to section 2001(b), three disinterested persons must appraise the  
17 properties. In order to facilitate that requirement, the United States has found the following  
18 neutral appraisal estimates as of November 6, 2019:

- 19 1. Zillow.com for \$1,168,465;
- 20 2. Redfin.com for \$1,132,158; and
- 21 3. Realtor.com for \$1,104,700.

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1 IV. CONCLUSION

2 For the reasons stated above, the United States respectfully requests that the court  
3 order the sale of the property described herein on the terms and conditions set forth above.


4 DATED December 3, 2019.

5 Respectfully submitted,

6 NICHOLAS A. TRUTANICH  
7 United States Attorney

8 /s/ Daniel D. Hollingsworth  
9 DANIEL D. HOLLINGSWORTH  
Assistant United States Attorney

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11 IT IS SO ORDERED:

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UNITED STATES DISTRICT JUDGE

15 Dated: December 5, 2019.  
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